Supreme Court, U.S.
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NO.

In The
SUPREME COURT OF THE UNITED STATES
December term, 2007

KIRK AND SUSAN WHITCOMBE
Husband and wife
Petitioners'
v.
LARRY AND SUSAN HENAK
Husband and wife
Respondent's

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Kirk and Susan Whitcombe
Pro- Se's
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Phoenix, AZ 85029
Telephone (602) 993-1326

QUESTIONS PRESENTED

(1) Can federal district courts and judges dismiss federal Pro-Se Plaintiff's CR60 Motion Complaint involving civil rights issues of a state void judgment allegedly violating citizens rights on a technicality then dismiss Pro-Se's corrected CR 60 Motion after the court had already received it for not being timely filed when the Court gave no time restrictions, and there are no local court rules or Federal Court Rules of Civil procedure requiring time limitations ?

(2) Does the Rooker - Feldman Doctrine as interpreted by the Court of Appeals, recognizing federal district courts do not have jurisdiction to vacate void judgments allegedly violating citizens rights the state highest court refused to address, remedy, and finalize, because only the United States Supreme Court has jurisdiction to review state court judgments of the highest state court, or does Federal Court Rules of Civil Procedure provide the basis of jurisdiction in district courts through an independent and original action, CR60 Relief From Judgment or Order, (b) (4), (5) and (6) ?

PARTIES

The names of all parties to the proceeding in the court whose judgment is sought to be reviewed here appear on the face of the Judgment.

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IN THE SUPREME COURT
OF
THE UNITED STATES

KIRK AND SUSAN
WHITCOMBE, et al.

Petitioners

- against -

LARRY AND SUSAN
HENAK, et al.

Respondents

OPINIONS BELOW

February 21, 2006, United States District Court of Phoenix, Arizona, filed its ORDER, dismissing Whitcombe/Plaintiff Pro-Se's, CR60 Relief From Judgment of Order (b) (4), (5) and (6) Motion filed 02/01/06, based on a local court rule technicality with permission to re - file their motion in accordance to local and federal rules. A-1

March 20, 2006, United States District Court of Phoenix, Arizona, filed its ORDER, denying Whitcombe's 02/27/2006 Motion for Reconsideration of the Court's 02/21/06 ORDER. A-2.

April 12, 2006, United States District Court of Phoenix, Arizona, filed its ORDER and JUDGMENT dismissing federal Pro-Se Plaintiff Whitcombe's independent and original action, CR60 (b) (4), (5), and (6) Motion, seeking federal relief from a state void judgment, allegedly violating citizens rights, a state's highest court refused to address, remedy or provide finality on grounds;

(1) Whitcombe's original Motion was dismissed on a "alleged" technicality,

(2) Whitcombe's corrected Motion was not re-filed timely, and

(3) the Rooker - Feldman Doctrine recognizes federal district courts do not have Federal Court Rules of Civil Procedure, CR60 Relief From Judgment or Order, (b) (4), (5) and (6), jurisdiction to review state court judgments of the highest state court. A-3,4

June 29, 2006, United States District Court of Phoenix, Arizona, filed its ORDER dismissing Whitcombe's Motion for Reconsideration and Motion to re-file their corrected CR60 Motion. A-5

September 29, 2006, United States Judicial Council For the Ninth Circuit Court, filed its ORDER AND MEMORANDUM, dismissing Whitcombe's allegations of misconduct of two federal district court judges refusal to perform their duties pursuant to Federal Rules of Civil Procedure, CR60 Relief From Judgment or Order, (b) (4), (5) and (6). A-6

October 19, 2006, United States Court of Appeals For the Ninth Circuit, filed its ORDER denying Whitcombe's Writ of Mandamus Petition requiring the federal district court of Phoenix, Arizona perform its duties pursuant to Federal Rules of Civil Procedure, CR60(b) (4), (5) and (6). A-7

December 4, 2006, United States District Court of Phoenix, Arizona, filed its ORDER by the district court

of Phoenix, Arizona, denying Whitcombe's November 30, 2006, CR60 Motion (b) Motion seeking relief from the Courts and Judges earlier dismissal of Whitcombe's CR60 Motion seeking relief from a state void judgment, for having no effect on the void judgment. A-8

January 18, 2007, United States Judicial Counsel of the Ninth Circuit, filed its ORDER, confirming its September 29, 2006 ORDER AND MEMORANDUM. A-9

July 16, 2007, United States Court Of Appeals For the Ninth Circuit District Court, filed its MEMORANDUM, dismissing and affirming the district courts April 12, 2006 Order and Judgment. A-11

August 24, 2007, United States Court Of Appeals For the Ninth Circuit District Court, filed its ORDER, denying Whitcombe's petition for rehearing en banc. A-12

JURISDICTION

What singular jurisdiction to cite is a very convoluted problem to federal Pro-Se's Plaintiff's in this Writ of Certiorari to answer under the attending circumstances.

The Order sought to be reviewed was filed July 16, 2007.

The Order denying rehearing en banc was filed August 24, 2007.

The question of which jurisdiction this Court has is a federal question raised in the Court of Appeals For the Ninth Circuit July 16, 2006 Order sought to be reviewed, Federal Question # 2 in this Writ of Certiorari, whether jurisdiction under 28 USC Sections 1331, 1332 and 1343

cited in Pro-Se Plaintiff's Complaint filed in the Federal District Court of the fist instance or 28 U.S.C Section 1257, cited in the Court of Appeals For the Ninth Circuit, July 16, 2007 Order. Pro -s Se Plaintiff's cite the multiple jurisdictions, cited herein as jurisdictions this Court has.

FEDERAL CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

1. The first Amendment to the United States Constitution reads in relevant part: **"Congress shall make no law...abridging ...the right of the people...to petition the government for redress of grievances."**

2. The First Amendment to the United States Constitution reads in relevant part; **Congress shall make no law ...abridging the freedom of speech..."**

3. The Fifth Amendment to the United States Constitution reads in relevant part: **"No person shall be ...deprived of liberty, or property, without due process of law..."**

4. The Fourteenth Amendment to the United States Constitution reads in relevant part: **"No state shall .... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."**

5. Federal Rules of Civil Procedure , **CR60 Relief From Judgment or Order, (b) (4) the judgment is void, (5) the judgment has been satisfied, released, or discharged, or prior judgment upon which it is based has been reversed or otherwise vacated, (6) for any other reason justifying relief from the operation of the judgment.**

OVERVIEW

Whitcombe's federal District Court Complaint seeks federal relief from an alleged void state lower court judgment, violating citizens rights, the state's highest court refused to address, remedy and finalize.

When Whitcombe's sought state relief, producing all of this information with back up documents in State Court records, the state's lower courts and judges placed five retaliatory sanctions against Whitcombe's, penalizing Whitcombe's for filing their Petitions for Redress of Grievances to be heard. The States highest court refused to address, remedy and finalize the void judgment, left the void judgment allegedly violating citizens rights unabated without finality.

When Whitcombe's turned to the federal courts and judges for federal relief, paying and filing their consolidated state Petitions in a federal Petition to be heard, the court and judges dismissed Whitcombe's Petition without addressing its substance and later in response to Whitcombe's Motion by December 4, 2006 district Court Order threatened to put sanctions against Whitcombe's if Whitcombe's continue to persist demanding their First Amendment Right to Petition to government For Redress of Grievances be heard.

> "To Punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort." Bordenkircher v Hayes, 434 U.S. 357, 363 (1978) (quoted in BMW at 517 U.S. at 573 n.19)

When Whitcombe's appealed to the United States

Court of Appeals For the Ninth Circuit; (1) to the Judicial Council, (2) for a Writ of Mandamus, (3) a formal appeal by Appellant's Informal Brief, (4) Appellant's Supplemental Opening Brief, (5) as a Petition for en banc rehearing. All of Whitcombe's efforts came and went with no federal Judiciary Branch of government help, as if there being no Constitutional issue and violation at stake here.

In the United State States, Citizens right to petition is guaranteed by the First Amendment to the Constitution, and it specifically prohibits Congress from abridging "the right of the people... to petition to Government for redress of grievances ." More specifically, the right to petition is the freedom of individuals to petition their government for a correction or repair of some form of injustice without fear of government retaliating.

A government that does not address the substance in Citizens Petitions for Redress of Grievances but know by reading it is disclosing alleged government wrongs, dismissing and putting sanctions is not listening. A government that does not listen can not care.

PROCEDURAL HISTORY OF THE FEDERAL WHITCOMBE V HENAK CASE

Whitcombe's federal case, Whitcombea v Henaks, was brought under the US Fourteenth Amendment Due Process and Equal Protection of the law jurisdictionally pursuant to 28 USC 1331, 1332 and 1343, in an independent and original action Motion pursuant to Federal Rules of Civil Procedure CR60 Relief From Judgment or Order, (b) (4) the judgment is void, requiring federal district court and judges have a

mandatory non-discretionary duty to vacate void judgments, (b) (5) vacate judgments based upon void judgment and (b) (6) provide relief from the operation of the void not covered in (4) and (5) effecting citizens rights. The Motion is also supplemented as cited by numerous other laws within the Complaint. (See in Appendix.)

February 21, 2006 District Court ORDER striking Plaintiff's CR60 Motion Complaint.

March 20, 2006 District Court ORDER denying Plaintiff's Motion For Reconsideration

April 12, 2006 District Court ORDER and JUDGMENT Dismissing Plaintiff's Original CR60 Motion Complaint and Refiled CR 60 Motion Complaint .

June 28, 2006, District Court ORDER, denying Plaintiffs'; Amended Motion For Relief From Judgment, Motion For Reconsideration, and Motion to Refile Rule 60 Motion.

September 29, 2006, The Judicial Council For The Ninth Circuit dismissed Whitcombe's Complaint the district court presiding and chief judge refuse to perform their duties pursuant to Federal Rules of Civil Procedure CR 60 Relief From Judgment or Order, (b) (4) the judgment is void, requiring federal district courts and judges have a mandatory non - discretionary duty to vacate void judgment (b) (5) vacate judgments based upon the void judgment, and (b) (6) provide relief from the operation of the judgment not covered in (b) (4) and (5).

October 19, 2006 the Court of Appeals rendered an ORDER denying Whitcombe's Writ of Mandamus requesting the district court perform its Federal Rules of Civil Procedure CR 60 Relief From Judgment or Order, (b) (4) the judgment is void, requiring federal district courts and judges have a mandatory non - discretionary duty to vacate void judgment (b) (5) vacate judgments based jupon the void judgment, and (b) (6) provide relief from the operation of the judgment not covered in (b) (4) and (5).

December 4, 2006 the district court Order, dismissing Whitcombe's Motion to vacate the District Courts Judgment against Whitcombe's, threatening to put sanctions against Whitcombe's if they continue to persist demanding their Citizens First Amendment Rights to Petition For Redress of Grievances of government wrongs to the Court.

January 18, 2007, The Judicial Council For the Ninth Circuit rendered an Order affirming the Chief Judges dismissal of Whitcombe's earlier Judicial Misconduct Complaint.

January 26, 2007 the Court of Appeals rendered an Order extending the time to 02/28/2007 to file a Supplemental Opening Brief in response to the district courts December 4, 2006 Order no later than February 28, 2007.

July 16, 2007 the Court of Appeals unpublished opinion dismissed Whitcombe's appeal.

August 24, 2007 the Court of Appeals for the Ninth Circuit Order before three judge panel denied federal

Pro-Se Plaintiff's petition for rehearing en banc.

REASONS FOR GRANTING THE WRIT.

Petitioner presents four reasons for granting the Writ:
(1) A United States Court of Appeals has decided a question of extreme public importance that has not been, but should be settled by this court;
(2) A United States Court of Appeals has entered a decision that has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power;
(3) A United States Court of Appeals has entered a decision that conflicts with decisions of its own and other United States Courts of Appeal:
(4) A United States Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court.

1. THE FOLLOWING ARE FIRST IMPRESSION QUESTIONS OF EXTREME PUBLIC IMPORTANCE

Federal Question # 2, Federal Court Rules of Civil Procedure - "govern the procedure in the United States district court in all suits of civil nature..." Federal Rules of Civil Procedure, Rule 1. If the Court of Appeals Memorandum stands, that the Rooker - Feldman Doctrine recognizes federal district courts do not have jurisdiction to comply with Federal Rules of Civil Procedure, CR60 Relief From Judgment or Order, then the Rooker - Feldman Doctrine governs the civil procedure in the United States district courts, which is not Congressionally approved and is without jurisdiction.

2. THIS COURTS SUPERVISORY POWER IS REQUIRED.

FEDERAL QUESTION # 1 Question Arizona federal district court's local rule 7.2 (e) **Length of Motions and Memoranda.,** is vague to Pro - Se Plaintiff's

> "Unless otherwise permitted by the Court, a motion including its supporting memorandum, and the response, including its supporting memorandum, each shall not exceed seventeen (17) pages, **exclusive of attachments and any required statement of facts.** ..." (Emphasis added)

The district courts March 20, 2006 Order, correctly identifies the problem,

> "Pending is Plaintiff's Motion For Reconsideration, filed on February 28, 2006. Plaintiffs seek reconsideration of the Court's Order of February 21, 2006, in which it ordered Plaintiff's previous Motion for Reconsideration stricken because at seventy pages long, it far exceeds the seventeen page limit under local rules. Plaintiff's argue that the Court erred, because pages ten through seventy seven contain a "statement of facts" that are excluded by Local Rule 7.2(e), which provides that "a motion including its supporting memorandum...shall not exceed seventeen pages, exclusive of attachments and ***any required statement of facts***...." (emphasis added). As the language suggests, this rule only excludes ***required*** statement of facts, such as those submitted a motion for summary judgment pursuant to local Rule 56.1." p.1. (Emphasis added by Whitcombe's in quote)

As stated in Whitcombe's Plaintiff's Motion for

Reconsideration dated February 27, 2006, on the issue raised is two fold. (1) How does any human with common intelligence, including professional attorney's who have not had the experience of having to comply with local CR 7.2 (e) know what the rule "suggests" ? Should not the rule state what the court suggests the language implies ?

(2) Whitcombe's allegations in their federal complaint consist of multiple counts of fraud, extortion and conspiracy. By the nature of Whitcombe's federal Complaint, their Complaint and Motion is required to be in compliance with, "Federal Civil Rule 9 Pleading Special Matters. (b) Fraud, Mistake, Conditions of Mind. "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent and other condition of mind of a person may be averred generally."

For this reason Whitcombe's thought a statement of facts were required.

Pertaining to Federal Questions # 2, as Whitcombe's point out in the following section, the Ninth Circuit is inconsistent with its own interpretation of the Rooker - Feldman Doctrine in their Eric Noel v Brian C. Hall; Brenda A. Hall No. 00-35988 CV-99-00649-DCA Opinion let alone in conflict with other Circuit Court Opinions.

3. THE COURT OF APPEALS FOR THE NINTH CIRCUIT DECISION CONFLICTS WITH OTHER CIRCUIT COURT DECISIONS.

Federal Question # 1 - The Plaintiff's civil rights pleading was 150 pages long and described by federal

judge as "inept". Nevertheless, it was held "where a plaintiff pleads pro-se in a suit for protection of civil rights, the Court should endeavor to construe Plaintiff's Pleadings without regard to technicalities." Pickering v Pennsylvania Railway, 151 F .2d 240, Third Circuit of Appeals.

Federal Question # 2 - The Rooker - Feldman Doctrine application by the Ninth Circuit preventing District Courts having jurisdiction to follow Federal Court Rules of Civil Procedure CR60 Relief From Judgment or Order (b) (4) the judgment is void, requiring district courts and judges have a mandatory non-discretionary duty to vacate void judgments, (5) vacate void judgments based upon the void Judgment, (6) provide relief for any other reason justifying relief from the operation of the judgment, conflicts with its own interpretation of the Doctrine. "[Because the judgment was not void, the state court's alleged constitutional errors could be corrected only "in an appropriate and timely appellate proceeding." "Since the jurisdiction of the district court is "strictly original "..." Rooker, 263 U.S at 415] Eric Noelv. Brian C. Hall No. 00-35988 D.C. No. CV-99-00649 - DCA Opinion, p. 12593 For Publication United States Court of Appeals For the Ninth Circuit.

(Federal Plaintiff's case alleges a state void judgment and is seeking federal remedy from an independent and original CR60 action.)
In Verizon Maryland Inc. v Public Service Commission, 535 U.S. 635, 644 n.3 (2002) it held that Rooker-Feldman does not apply to a suit in which review is sought in federal district court of "executive action, including determinations made by a state administrative agency." ibid. P. 12598

(Federal Plaintiffs case alleges pursuant to CR60 (b) (6), the void judgment is procured by state agency action and is reviewable pursuant to 5 USC 702 Right of review. p.3.)

Federal Plaintiff's Complaint cites several federal case laws vacating state void judgments without Rooker-Feldman intervention ; "A void Judgment entered by a court which lacks jurisdiction over subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided the party is properly before the court." Long v Shorebank Development Corp., 182 F. 3rd 548 (C.A. 7 111.1999)

"Where CR60 (b) (4) is properly invoked on the basis that the underlining judgment is void, "relief is not a discretionary matter, it is mandatory." Orner v Shala, 30 F. 3d 1307, 1310 (10th Cir. 1994) (quoting V.T.A. Inc. v Airco, Inc., 597 F. 2d 220, 224 n.8 (10th Cir. 1979)

"There is no question of discretion on the part of the court when a motion is under Rule (b) (4) .....either a judgment is void or it is valid." 11 Wright & Miller, Federal Practice and Procedure - Civil * 2862, quoted in Olle v Henry & Wright Corp., 910 F 2d 357, 364 (6th Cir. 1990) accord Combs v Nick Garin Trucking, 825 F.2d 437, 441 (D.C. Cir. 1987) "A party attacking a judgment as void need show no meritorious claim or defense or other equities on his behalf, he is entitled to have the judgment treated for what it is, a legal nullity." Combs v. Nick Garin Trucking, 825 F .2d 437, 441- 42 (D.C. Cir. 1987)

4. THE NINTH CIRUIT COURT HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

Federal Question # 1 - the Ninth Circuit has decided federal Pro-se litigants cases will be dismissed on technicalities and that Pro-Se's will be held to the same standards as lawyers. This directly conflicts with, "Pro-se pleadings are to be considered without regard to technicality; pro se litigants pleadings are not to be held to the same high standards of perfection as lawyers." Jenkins v McKeithen, 395 U.S. 411, 429 (1959); Pickering v Pennsylvania R. Co., 151 Fed. 2nd 240; Pucket v Cox, 456 2nd 233.

This Court reviews the sufficiency of a pro-se plaintiff's complaint by liberal construction of the pleadings. Haines v. Kerner, 404 U.S. 519, 521 (1972)

Federal Question # 2 - the Ninth Circuit Courts broad interpretation and application of the Rooker - Feldman Doctrine recognizes federal district courts do not have jurisdiction to comply with Federal Rules of Civil Procedure, CR60 Relief From Judgment or Order (b) (4) the Judgment is void, requiring judges have a mandatory non-discretionary duty to vacate void judgments. The Rooker - Feldman Doctrine is not about state void Judgments and Plaintiff's could find no Court Cases that imply it is.

There is no rational Constitutional reason why judges would not vacate void judgments, including their own.

"without authority, its judgments and orders are

regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers. Elliot v Piersol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828)

CONCLUSION

When considering Whitcombe's Writ of Certiorari for discretionary review, please read Whitcombe's federal Complaint found in Attachments A-13. The many exhibits are on file in the federal district court of Phoenix Arizona, waiting to be reviewed or sent to the United States Supreme Court as soon as when and if this honorable court decides which jurisdiction governs who and where hopefully Whitcombe's Complaint will finally be heard.

Its seems Constitutionally rational to Whitcombe's that void judgments must be addressed for what they are - a legal nullity, not subject for review in the United States Supreme Court. This is because void judgments are not legally accepted bona fide judgments that are appeal able. As federal case law states there is no merit in reviewing a void judgment whether it be federal or state. Review of a void judgment, that is dead legally, can not revive the void judgment to be legally effective when it never was.

We hope this Honorable court understands freedom is not free to those who are forced by government intervention to maintain it before they can get it. As Pro-Se victims who are left penny less because of their loss of freedom by government intervention, or for some

other legitimate reason or another can not get Attorney representation in maintaining their Constitutional freedoms Pro-Se's should never-the less not be handicapped by the federal courts and judges requiring Pro-Se's be held to the standards of Attorneys in civil rights issues.

The United States Constitutional First Amendment Right for Citizens to Petition to government for Redress of Grievances and the United States Fifth Amendment Due Process and Equal Protection of the law allows Pro-Se Citizens the right to get in the door of federal courts and receive Due Process and equal protection of the law. That is all that we, the Whitcombe's, Pro Se ask for which is a Constitutional guarantee our State and Federal Government will provide all citizens that right.

For these reasons Federal Pro-Se Plaintiff's encourage this Honorable Court to grant this Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit. Thank You.

Dated this 20th day in December, 2007

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APPENDIX

In The
SUPREME COURT OF THE UNITED STATES
December term, 2007

KIRK AND SUSAN WHITCOMBE
Husband and wife
Petitioners'
v.
LARRY AND SUSAN HENAK
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Respondent's

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT COURT OF ARIZONA

Kirk & Susan Whitcombe, Husband and Wife,	) No. CV 06-0374-PHX-ROS
	) **ORDER**
Plaintiffs,	)
	)
Larry Henak and Susan Henak, Husband and Wife	)
	)
Defendants.	)
	)

Pending is Plaintiffs' Motion For Reconsideration (Doc. # 1) . Plaintiff's Motion is 77 pages long, excluding exhibits, and far exceeds the seventeen page limit permitted under Local Rule 7.2(e) . The court is permitted to dispose of a motion summarily for non-compliance pursuant to sections (i), which provides that "[i]f a motion does not conform in all substantial respects with the requirements of this Local Rule .... Such non-compliance may be deemed a consent to the denial of granting of the motion and the Court may dispose of the motion summarily." This Court has previously stated that although it will construe a pro-se parties' pleadings liberally, such a party is bound to follow the procedural rules applicable to all litigants, represented or not. See Green v Dorrell, 969 F .2d 915, 917 (10th Cir. 1992). '[P]ro se litigants in the ordinary civil case should not be treated more favorably than parties with attorneys of record." Jacobsen v. Filler, 790 F.2d 1362, 1364 (9th Cir. 1986). Because Plaintiff did not adhere to the proper procedural rules, the submission

must be stricken.

The Court will permit Plaintiffs to refile their motion in accordance with local and federal rules. The Court notes that several of the judgments for which Plaintiff's seek reconsideration were issued several years ago in other jurisdictions. Plaintiffs are reminded that although Rule 60 provides for an independent action to relieve a party from a judgment, order, or proceeding, it requires that the motion be made "within a reasonable time, and for reasons (1) mistake, inadvertence, neglect]. (2) [newly discovered evidence], and (3) [fraud] not more than one year after the judgment, order, or proceeding was entered or taken.

DATED this 21st day of February, 2006

"s/_____"
Roslyn O. Silver
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT COURT OF ARIZONA

Kirk & Susan Whitcombe, Husband and Wife,	) No. CV 06-0374-PHX-ROS
	) **ORDER**
Plaintiffs,	)
	)
Larry Henak and Susan Henak, Husband and Wife	)
	)
Defendants.	)
	)

Pending is Plaintiff's Motion for Reconsideration (Doc. #10) filed on February 28, 2006. Plaintiffs seek reconsideration of the Court's Order of February 21, 206 (Doc. #4), in which it ordered Plaintiff's previous Motion for Reconsideration stricken because at seventy-seven pages long, it far exceeds the seventeen page limit permitted under the local rules. Plaintiffs argue that the Court erred, because pages ten through seventy-seven contain a "statement of facts" that are excluded by Local Rule 7.2(de), which provides that "a motion including its supporting memorandum…shall not exceed seventeen pages, exclusive of attachments and *any required statement of facts* …." (emphasis added). As the language suggests, this rule only excludes *required* statement of facts, such as those submitted with a motion for summary judgment pursuant to Local Rule 56.1. It does not exclude a sixty- seven page section of a motion that a party chooses to call a *statement of facts* in order to circumvent the page limit. Plaintiffs' Motion will be denied.

Accordingiy,

IT IS HEREBY ORDERED that Plaintiff's Motion for Reconsideration (Doc.#10) is DENIED.

DATED this 20th day of March, 2006.

"s/_____"
Roslyn O Silvet
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT COURT OF ARIZONA

Kirk & Susan Whitcombe, Husband and Wife,	) No. CV 06-0374-PHX-ROS
	) **ORDER**
Plaintiffs,	)
	)
Larry Henak and Susan Henak, Husband and Wife	)
	)
Defendants.	)
	)

On February 1, 2006, Plaintiffs brought this independent action pursuant to Fed. R. Civ. P. 60(b) seeking to set aside three orders rendered by the King County, Washington Superior Court in Henak v. Whitcombe, et al., No. 95-2-2783-1 (Wash. Super. Ct. 1996), one order rendered by Okanagan County, Washington Superior Court in Whitcombe v. Twiss, et al., No. 01-2-00065-1 (Wash. Super. Ct. 2002), and on order rendered by the Washington State Court of Appeals in Whitcombe v. Kitz, et al., No. 52005-9-I, consolidated with No. 52170-5-I (Wash. Ct. App. 2004).[1]

[1] The saving clause of Fed. R. Civ. P. 60(b) provides that the rule "does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding." Wright, Miller & Kane, Federal Practice and Procedure: civil 2d § 2868. This is not an affirmative grant of power, but merely allows the "continuation of whatever power the court would have had to entertain an independent action if the rule had not been adopted." Treadaway v. Academy of Motion Picture Arts and sciences, 783

See Exhibits 18, 31, 62, 57, 67 to Plaintiffs' Motion For Relief From Judgment (Doc. #4). On February 22, 2006, the court ordered the filling stricken pursuant to Local Rule 7.2(e) for exceeding the page limit, but permitted Plaintiffs to refile the motion in accordance with local and federal rules (Doc. #4). Plaintiffs have yet to file a new motion. Because the initial Motion is no longer part of the record, and Plaintiffs have failed to file an amended motion in compliance with the Court's Order, this action has not been legally commenced pursuant to the Federal Rules of Civil Procedure.

Moreover, this Court lacks jurisdiction to set aside state court judgments. Although Fed. R. Civ. P. 60(b) permit's a court other than the one that issued the judgment to provide relief, it is not a n affirmative grant

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F.2d 1418, 1420 (9th Cir. 1986). The exercise of this power has historically been exercised "only under unusual and exceptional circumstances." Id. These principles have been explicitly recognized by this Circuit. See id. citing Lapin v. Shulton, 33 F.2d 169 (9th Cir. 1964) (affirming lower court's holding that "considerations of comity and orderly administration of justice demanded that the none rendering court should be decline jurisdiction of such an action and remand the parties for their relief to the rendering court, so long as it is apparent that a remedy is available there).

of power and merely allows "the continuation of power the court would have had to entertain an independent action." Treadaway v. Acad. Of Motion Picture Arts and Sciences, 783 F.2d 1418, 1420 (9th Cir. 1986). It is well established that federal courts cannot enjoin the enforcement of state judgments. See Atl. Coast Line R.R Co. V. Bhd. Of Locomotive Eg'r, 398 U.S. 281 (1970); 28 U.S.C § 2284; Furnish v. Bd. Of Med. Exam'rs, 257 F.2d 520 (9th Cir. 1958). All of the judgments Plaintiffs seek to set aside are state court judgments over which this Court lacks jurisdiction. As a result, the action must be dismissed.

Accordingly,

IT IS HEREBY ORDERED that this action shall be DISMISSED.

DATED this 12th day of April, 2006.

"s/_____"
Roslyn O. Silver
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT COURT OF ARIZONA

Kirk & Susan Whitcombe, Husband and Wife,	) No. CV 06-374-PHX-ROS
	) **JUDGMENT**
Plaintiffs,	)
V.	)
Larry Henak and Susan Henak, Husband and Wife	)
	)
Defendants.	)

___ **Jury Verdict.** This action came before the Court for trial by jury. The issues have been tried and the jury has rendered its verdict.

_X_ **Decision by Court.** This action came for consideration before the Court. The issues have been considered and the decision has been rendered.

IT IS HEREBY ORDERED that this action shall be dismissed.

April 12,2006

RICHARD H. WEARE
Clerk/ DCE

s/ Tammy Johnson
(By) Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT COURT OF ARIZONA

Kirk & Susan Whitcombe, Husband and Wife,	) No. CV 06-0374-PHX-ROS
	) **ORDER**
Plaintiffs,	)
	)
Larry Henak and Susan Henak, Husband and Wife	)
	)
Defendants.	)
	)

Pending are Plaintiffs' Motion For Relief From Judgment (Doc. #17), Motion For Reconsideration (Doc. #18), and Motion to Refile CR 60 Motion (Doc. #20). For the Reasons set forth below, these Motions will be denied.

I. Background

This action arises out of a boundary dispute between Plaintiffs and their neighbors, Larry and Susan Henak. In 1995, the Henaks file a trespass damages action against the Whitcombes, in which the Henaks prevailed. Henak v. Whitcombe, et al., No. 95-2-02783-1 (Wash. Super. Ct. 1996) (Exs. #17, 18 to Plaintiffs' Motion For Relief From Judgment, Doc. #17). The Whitcombes appealed, and the Washington Court of Appeals affirmed on April 27,1998. Henak v. Whitcombe, et al., No. 39547-5-1 (Wash. Ct. App. 1998) (Ex.#22 to Plaintiffs' Motion for Relief From Judgment, Doc. #17). Plaintiffs then filed a Motion to Vacate the Judgment on February

22, 1999 based upon information obtained question the method used by the Henaks' surveyor, Mr. Kitz, whose survey the Superior Court relied upon in finding the Henaks' in favor. Henak v. Whitcombe, et al., No. 95-2-02783-1 (Wash. Super. Ct. 1996)(Ex. #28) to Plaintiff's Motion For Relief From Judgment, Doc. #17). The trial court denied the motion on the grounds that it had been affirmed by the Court of Appeals and was res ajudicate. Id.)Exh. #31 to Plaintiffs' Motion For Relief From Judgment, Doc. #17). On August 23, 2002 Plaintiffs again moved to vacate the judgment, which the trail court denied on January 3, 2003 for the same reasons. Id. (Exh. #67 to Plaintiffs' Motion For Relief From Judgment, Doc. #17). The Court of Appeals affirmed the trial court's finding. Whitcombe v. Kitz, et al., No. 52005-9-I, consolidated with No. 52170-5-I (Wash. Ct. App. 20041) (Ex. #75 to Plaintiffs' Motion To Vacate Judgment, Doc. #17).

In another cause of action, Plaintiffs filed suit against the Washington State Board of Registration for Professional Engineers and Land Surveyors for its failure to censure Mr. Kitz on February 13,2001. Whitcombe v. Twiss, et al., CV 01-200065-1 (Wash. Super. Ct. 2001) (Ex. #42 to Plaintiffs' Motion To Vacate Judgment, Doc. #17). The lawsuit was dismissed on December 1, 2002, and the Court of Appeals affirmed in an unpublished opinion. Whitcombe v. Twiss, et al., No. 21637-3-III (Wash Ct. App. 2005) (Ex. #80 to Plaintiffs' Motion to Vacate Judgment, Doc #17).

In separate cause of action, the Whitcombes brought suit against Mr. Kitz for fraud, violation of survey recording laws, and negligence in surveying based on the survey he recorded on May 12, 1995. The

uit was filed on January 15,2002, and the
hington Court of Appeals affirmed on May 10, 2004.
tcombe v. Kitz, et al., No. 52005-9-I, consolidated
No. 52170-5-I (Wash. Ct. App. 2004) (Ex. #75 to
ntiffs' Motion To Vacate Judgment, Doc #17). The
eme Court of Washington also affirmed.
tcombe v. Kitz, et al., C/A No. 52005-9-I (Wash.
) (Ex. #82 to Plaintiffs' Motion To Vacate, Doc. #17).

February 1, 2006 Plaintiffs brought this independent
n pursuant to Fed. R. Civ. P. 60 (b) [1] seeking to set
e three orders rendered by the King County,
hington Superior Court in Henak v Whitcombe, et
No. 95-2-02783-1 (Wash. Super. Ct. 1996), which was
riginal trespass suit; one order rendered by
nogan County, Washington Superior Court in
tcombe v Twiss, et al., No. 01-2-00065-1 (Wash.
r. Ct. 2002), which suit was brought against the
hington State Board of Registration for Professional
neers and Land Surveyors; and one order rendered
e Washington State Court of Appeals in Whitcombe
tz, et al., No. 52005-9-1, consolidated with No.
0-5-1 (Wash. Ct. App. 2004), which is the Order
ning the trial courts' denial of the Second Motion
acate Judgment in the original trespass action, and
rial court's dismissal of the Whitcombes' claim
nst Henaks' surveyor, Mr. Kitz, for being time
ed (Doc. # 3, stricken).

February 22, 2006, the Court ordered the filing
ken pursuant to Local Rule 7.2(e) for exceeding the

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ts Dismissal Order of April 12, 2006, the Court set forth the
grounds upon which an independent action pursuant to Fed.
. P. 60(b) may lie and incorporates it herein.

page limit, but permitted Plaintiffs to refile the motion in accordance with local and federal rules (Doc. #4). On April 12, 2006 this Court dismissed the action based upon Plaintiff's failure to amend in compliance with its previous Order, and also because the Court lacks jurisdiction to grant the relief requested (Doc. #15). The next day, the Clerk entered the Plaintiff's Amended Rule 60 (b) Motion (Doc. # 17).

On April 20, 2006 Plaintiffs filed a Motion For Reconsideration (Doc. # 18), and on April 26, 2006 they filed a Motion To Refile CR60 Motion (Doc. #20).[2] For the reasons set forth in the Dismissal Order, this Action has not been legally commenced, thus no party has responded to the Motions.

11. **Motion for Reconsideration**

The Court has discretion to reconsider and vacate its orders. See Barber v. Hawaii, 42 F. 3d 1185, 1198 (9th Cir. 1994); United States v Nutri-Cology, Inc., 982 F. 2d 394, 396 (9th Cir. 1992.) Motions for reconsideration are distavored, however, and are not the place for parties to make new arguments not raised in their original briefs. See Northwest Acceptance Corp. v. Lynnwood Equip., Inc., 841 F.2d 918, 925-26 (9th Cir. 1988). Nor is it the time to ask the court to rethink what is has already thought.

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[2] Plaintiffs repeatedly cite to "CR60" as the basis for their motion. After reviewing the Attachments to the Motion, it appears that his short-cite refers to the Washington State Court Rule of Civil Procedure, which is inapplicable in federal court. Nonetheless, given the Plaintiffs' pro se status and the similarity of the Superior Court rule and corresponding federal rules, the Court will construe the Motion as being brought pursuant to Rule 60 of the Federal Rules of Civil Procedure.

See United States v. Rezzonico, 32 F. Supp. 2d 1112, 1116 (D. Ariz. 1998).

A Rule 60 motion for relief from an order may be granted only "upon a showing of (1) mistake, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) a void judgment; (5) a satisfied or discharged judgment; or (6) extraordinary circumstances which would justify relief." School Dist. No. 1J Multnomah County, Or, v. AcandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993); Fed. R. Civ. P. 60 (b); Allmerica Fin. Life Ins. & Annuit Co. v. Llewellyn, 139 F. 3d 664, 666 (9th Cir. 1997) (stating that party must show "extraordinary circumstances" to obtain relief under Rule 60 (b) (6)).

Plaintiffs contend that the Court erred finding that it lacks jurisdiction because the state court judgments it seeks to enjoin were procured by fraud, and that as a result, this Court does in fact have jurisdiction, citing Long v Shorebank Development Corporation, 182 F.3d 548, 554 (7th Cir. 1999). Although Seventh Circuit law is not binding upon this Court, the premise for which Long is cited is well-settled law. Under the *Rooker-Feldman* doctrine, lower federal courts do not have subject matter jurisdiction over claims seeking review of state court judgments. Rooker v Fidelity Trust Co., 263 U.S. 414, 415-16 (1923). Thus, a party seeking review of a state court judgment must seek relief through the state court system and ultimately the Supreme Court. The federal court has no jurisdiction if consideration would require review of the allegations underlying the state judicial decision. See Robinson v. Ariyoshi, 753 F.2d 1468, 1471-72 (9th Cir. 1985), *vacated on other grounds*, 477 U.S. 902 (1986) This doctrine applies even when the challenge to the state court decision involves federal constitutional

issues. See Feldman, 460 U.S. at 484-86.

Plaintiffs contend that under Long, federal courts have jurisdiction over a "federal claim alleging a prior injury caused by a state court judgment," but not "a federal claim alleging injury caused by a state court judgment," and that because their claim falls in the former category, this court has jurisdiction. Plaintiffs mischaracterize the nature of the relief sought. Plaintiffs' claim that the judgments procured are fraudulent rests upon its allegation that the Kitz survey upon which the district court relied in the original trespass action was faulty. This argument has been raised repeatedly in the original trespass action through Motions To Vacate The Judgment, and also in the actions Whitcombes brought against Kitz and the State Board of Registration for Professional Engineers and Land Surveyors, and has been rejected in every instance. Even if this Court found the state court judgments were incorrect, it would still not have jurisdiction. See Long, 182 F.3d at 556. Thus, Plaintiffs' action is the very category from which it seeks to be distinguished in that it "alleges injury caused by a state court judgment." Because Plaintiff's raise no new grounds warranting relief pursuant to Rule 60, the Court will deny the Motion.

III. Amended Rule 60 Motion

As previously set forth, Plaintiffs Amended Motion (Doc.#17) was not considered in the Dismissal Order. It is of no consequence, however, as it seeks the same relief over which the Court lacks jurisdiction. For reasons set forth in the Dismissal Order and above, the Motion will be denied.

Motion To Refile Rule 60 Motion

Plaintiffs seek to refile their Rule 60 Motion on
nds that the Court should not have stricken the first
on or dismissed the action. Plaintiffs contend that
te the Court's allegation in the Dismissal Order,
file an Amended Motion. As the Court previously
ined, due to the simultaneous filing of the
nded Motion and the Court's Dismissal Order, the
nded Motion was not considered. Even if the
nded Motion had been considered, however, the
t would still have dismissed the action because it
the same relief as in the original Motion, which the
t is unable to grant for lack of jurisdiction. For
reasons, the Motion will be denied.

rdingly,

IS HEREBY ORDERED that Plaintiffs' Amended
on For Relief From Judgment (Doc. # 17), Motion
econsideration (Doc. #18), and Motion To Refile
60 Motion (Doc.#20) are denied.

ATED this 28 day of June, 2006.

s/ _____
Roslyn O. Silver
United States District Judge

FILED
SEP 29 2006
Cathy A. Catterson, Clerk
U.S. Court Of Appeals

JUDICIAL COUNCIL

FOR THE NINTH CIRCUIT

In re Charge of	)	
	)	No. 06-89062
Judicial Misconduct	)	ORDER AND
	)	MEMORANDUM

Before: SCHROEDER, Chief Judge

A complaint of misconduct has been filed against two district judges of this circuit. Administrative consideration of such complaints is governed by the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct of Disability (Misconduct Rules), issued pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. 28 U.S.C. ** 351-364.

Complainants, pro-se litigants, allege that the district judges assigned to their case violated a "mandatory nondiscretionary duty" to vacate an allegedly void state court judgment. The judge denied their motions under Federal Rules of Civil Procedure 60 (b) and dismissed the action. Complainants contend that the chief district court judge ignored their requests that he intervene and require the first judge to fulfill her "duty." They also claim that the assigned Judge delayed in ruling on their motions and that their case was on file for four months with no relief. Complainants' exhibits and the case

cket sheet have been carefully reviewed.

This complaint relates to the assigned judge's rulings d decisions in complainants' case, and to the chief strict judge's failure to intervene. A complaint will be smissed if it is directly related to the merits of a dge's ruling or decision in the underlining case. 28 S.C.* 352(b) (1) (A) (ii) ; Misconduct Rule 4 (c) (1). A allenge to a judge's rulings should be sought through e correct review procedure and not through the ocedures of judicial misconduct. See In re Charge of dicial Misconduct, 685 F. 2d 1226, 1227 (9th Cir. Jud. ouncil 1982) (If complaint wants to challenge the dge's rulings, correct review procedure, "not the ocedures for judicial misconduct, [is] the proper medy.") Only a court has the power to change a cision or ruling. The Judicial council, the body that kes action under the misconduct complaint procedure, es not have that authority. Complainants have filed appeal. Charges related to the judges' rulings and cisions are, therefore, dismissed.

urthermore, complainants cannot challenge alleged lay under the misconduct procedures unless the rcumstances are extraordinary, as "where the delay is bitual, is improperly motivated or is the product of proper animus or prejudice toward a particular igant, or possibly, where the delay is of such an traordinary or egregious character as to constitute a ear dereliction of judicial responsibilities." ommentary on Misconduct Rule 1. Such is not the se here.

COMPLAINT DISMISSED.

s/ _____

Chief Judge

FILED
OCT. 19 2006
Cathy A. Catterson, Clerk
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: KIRK L. WHITCOMBE In re: SUSAN L. WHITCOMBE Petitioners,	No. 06-73746 D.C. No CV-06-00374-ROS
KIRK L. WHITCOMBE; et al., Petitioners, v. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, Respondent, LARRY HENAK; et al., Real Parties in Interest.	ORDER

Before: TASHIMA, W. FLETCHER and BERZON, Circuit Judges.

Petitioner has not demonstrated that this case

rrants the intervention of this court by means of the
raordinary remedy of mandamus. *See Bauman v.*
ited States District Court, 557 F.2d 650 (9th Cir. 1977).
cordingly, the petition is denied.

lo motions for reconsideration, modification, or
rification of this order shall be filed or entertained.

WO

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT COURT OF ARIZONA

Kirk & Susan Whitcombe, Husband and Wife,	) No. CV 06-0374-PHX-ROS
	) ORDER
Plaintiffs,	)
	)
Larry Henak and Susan Henak, Husband and Wife	)
	)
Defendants.	)

Pending before the Court is Plaintiffs Motion to Vacate (Doc.# 28). For the following reasons, this motion will be denied.

A *pro se* litigant "must follow the same rules of procedure that govern other litigants." King v Atiye, 814 F.3d 565, 567 (9th Cir. 1987). The Court has already entered a judgment of dismissal of Plaintiff's action, denied his motion for reconsideration, and denied his petition for mandamus. The Ninth Circuit Stated that "[n]o motions for reconsideration, modification, or clarification of this order shall be filed or entertained."

Plaintiff no files this Motion to Vacate under Rule 60(b) arguing "mistake, inadvertence, excusable neglect, newly discovered evidence, and fraud upon the court." The Court has already ruled on Plaintiff's Rule 60 motion, finding his claims meritless. The Court will not entertain another Rule 60 (b) motion based upon the

e claims.

e Court will not sanction Plaintiff at this time but
ns Plaintiff that no further motions shall be filed.
Court has already entertained Plaintiffs motion for
nsideration and the Ninth Circuit has denied his
eal. This case is closed. Sanctions will be imposed if
ntiff files any additional motions.

ccordingly,

T **IS ORDERED** that Plaintiffs Motion to Vacate
. 28) is **DENIED.**

DATED this 4th day of December, 2006.

s/ _____
Roslyn O. Silver
United States District Judge

FILED
JAN 18 2007
Cathy A. Catterson, Clerk
U.S. COURT OF APPEALS

JUDICIAL COUNCIL

OF THE NINTH CIRCUIT

IN RE COMPLAINT OF	No. 06-89062
	ORDER
JUDICIAL MISCONDUCT	

Before: KOZINSKI, THOMPSON, GRABER, WARDLAW and BERZON, Circuit Judges, and BREYER, HATTER, MOLLOY and WINMILL District Judges.*

Pursuant to Chapter III of the Rules of the Judicial Council Governing Complaints of Judicial Misconduct or Disability under 28 U.S.C. * 352(c), complainant has filed a petition for review of the order of the Chief Judge entered on September 29, 2006, dismissing the complaint against two distrtict judges.

We have carefully reviewed the record and the authorities cited by the Chief Judge in her order of dismissal. We find no basis for overturning the order of dismissal.

For the reasons stated by the Chief Judges and based upon the controlling authority cited in support thereif,

e affirm.

Hon. Roger G. Strand did not participate in the
nsideration of this matter.

FILED
JAN 26 2007
Cathy A. Catterson, Clerk
U.S.COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KIRK L. WHITCOMBE; et al,	No. 06-16488
Plaintiffs-Appellants,	D.C. No. CV-06-0374-ROS
v.	District of Arizona Phoenix
LARRY HENAK, Husband; et al,	
Defendants - Appellees.	ORDER

Appellants' "motion for court to resume appeal" received on December 12, 2006, is construed as an amended notice of appeal from the district court's December 4, 2006 order4. Appellants may file a supplemental opening brief no later than February 28, 2007. This case will be ready for calendaring upon receipt of the supplemental opening brief or upon the expiration of time to file the supplemental opening brief.

For the Court

s/ _____
Allison Taylor
Motions Attorney/Deputy Clerk
9th Cit. R. 27-7
General Orders/Appendix A

FILED
JULY 16, 2007
Cathy A. Catterson, Clerk
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RK L. WHITCOMBE; et al.,	No. 06-16488
Plaintiffs - Appellants,	D.C. No. CV - 06-00374 - ROS
RRY HENAK, Husband; et al.,	MEMORANDUM
Defendants - Appellees.	

Appeal from the United States District Court
For the District of Arizona
Roslyn O. Silver, District Judge, Presiding

Submitted July 9, 2007**

ore: LEAVY, THOMAS, and BERZON, Circuit
ges.

his disposition is not appropriate for publication and
ot precedent except as provided by 9th Cir. R. 36-3.
This panel unanimously finds this case suitable for
ision without oral argument. See Fed. R. App. P.
a)(2).

Kirk and Susan Whitcombe appeal pro se the dismissal of their action seeking to set aside orders issues by Washington state courts in three cases arising out of a boundary dispute between the Whitcombe's and their neighbors, Larry and Susan Henak. We have jurisdiction pursuant to 28 U.S.C. * 1291. We affirm.

United States district courts lack authority to review final judgments of state courts acting judicially; such review may only be had in the United States Supreme Court. *See Dist. Of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983). The *Rooker - Feldman* doctrine thuse bars cases such as the Whitcombes': "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). Dismissal was proper.

The district court also properly denied the Whitcombes' numerous motions seeking reconsideration, vacatur of the judgment, and leave to refile.

AFFIRMED.

FILED
AUG 24 2007
Cathy A. Catterson, Clerk
U.S.COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KIRK L. WHITCOMBE; et al,	No. 06-16488
Plaintiffs-Appellants,	D.C. No. CV-06-0374-ROS
v.	District of Arizona Phoenix
LARRY HENAK, Husband; et al,	ORDER
Defendants - Appellees.	

Before: LEAVY, THOMAS, and BERZON, Circuit Judges.

The Panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judges has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

No further filings will be accepted in this closed case.

Kirk & Susan Whitcombe- Pro - Se's
3303 West Twain Court
Anthem, AZ 85086
(623) 551-3900 Home Phone and fax
Whitcombe@qwest.net email address.

FILED
April 11, 2006
(per court
docket sheet)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Kirk & Susan Whitcombe Husband and Wife	) CASE NO. CV'06 0374 PHX) ROS)
Plaintiff's	) CIVIL RULE 60 MOTION) FOR RELIF FROM) JUDGMENT NOT) OPERATING - LACKING) SUBJECT MATTER &
Larry & Susan Henak, Husband and Wife	) PERSON MATTER) JURISDICTION -PROCURED) BY FRAUDS - SATISFIED) 1997 BY EXTORTIONS &
Defendant's	) FRAUD- CONSPIRACY) WITH INTENT TO) OBSTUCT DUE COURSE) OF JUSTICE 1997-2005 -) STATE OFFICIALS) ACTING WITH PRIVATE) INDIVIDUALS) IMPLICATED)
	) DECLARATION) ATTACHED

)
) REPORTING CRIMINAL
) ACTIVITES TO THE
) COURT,18 USC 4 & 18
) USC 2
)

1. JURISDICTION

1 Jurisdiction under Federal Civil Rule 60 to vacate a oid judgment is inherent.

2 A void judgment entered by a court which lacks risdiction over subject matter, or lacks inherent power enter the particular judgment, or an order procured fraud, can be attacked at any time, in any court, either rectly or collaterally, provided the party is properly fore the court. Long v. Shorebank Development orp., 182 F. 3rd 548 (C.A. 7 Ill. 1999). Emphasis added.

3 A void judgment is one which has no legal force or fect, invalidity of which may be asserted by any person hose rights are affected at any time and at any place rectly or collaterally. Reynolds v Volunteer State Life s. Co. Tex. Civ. App., 80 S.W. 2d 1087, 1092. Blacks aw Dictionary 6th Edition, p. 1574.

4 Where CR60 (b) (4) is properly invoked on the basis at the underlining judgment is void, "relief is not a scretionary matter, it is mandatory." Omer v Shala, 30 3d 1307, 1310 (10th Cir.1994) (quoting V.T.A., Inc. v. irco, Inc., 597 F. 2d 220, 224 n.8 (10th Cir. 1979)

5 14th Amendment Due Process and Equal Protection uarantees.

1.6 Federal rule CR 60 Relief from Judgment or Order. CR60(b)(4) Motion to Vacate Void Judgment, Federal Rule 60(b)(5) the judgment has been satisfied, released, or discharged, or prior judgment upon which it is based has been reversed or otherwise vacated, and CR60(b)(6) any other reason justifying relief from the operation of the judgment.

1.7 28 USC 1332 Diversity of citizenship; amount in controversy; costs. (a) The district courts shall have original jurisdiction of all civil actions where the mater in controversy exceeds the sum or value of $75,000, exclusive of interests and costs, and is between (1) citizens of different States

1.8 28 USC 1331, the district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

1.9 28 USC 1343 Civil rights and elective franchise (1),(2),(3)& (4).

1.10 42 USC 1981 Equal rights under color the law,

1.11 42 USC 1982 Property rights of citizens,

1.12 42 USC 1983 Civil action for deprivation of rights;

1.13 42 USC 1985 Conspiracy to interfere with civil rights, (2) Obstructing justice, (3) Depriving persons of rights and privileges.

1.14 5 U.S.C. 702 Right of review. "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency within the meaning of a

elevant statute, is entitled to judicial review thereof."

11. VENUE

2.1 Venue to vacate a void judgment under Federal Rule 60 and as interpreted by cited case laws is any location where a Federal District Courts is located.

2.2 ["Where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief" Bell v. Hood., 327 U.S. at 684 (footnote omitted); see Bemis Bros. Bag Co. v. United States, 289 U.S. 28, 36 (1933) (Cardozo, J.); The Western Maid, 257 U.S. 419 (1922) (Holmes, J.)]" Bivens v Six Unknown Named Agents of the Federal Bureau of Narcotics 403 U.S. 388 (1971).

111. RELIEF REQUESTED

3.1 Plaintiff's Kirk and Susan Whitcombe, husband and wife move the above - entitled Court for entry of order Vacating the Henak v Whitcombe judgment No. 95-2-02783-1SEA, entered against Whitcombe's by Washington State King County Superior Court on September 20, 1996, Ex. 17, staying enforcement of four judgments based on the Henak v Whitcombe judgment Ex's 31, 62, 67 and 75, until the motion can be heard, and for further relief as follows;

3.2 Pursuant to Federal Rule 60(b) (4) the judgment is void;

3.2.1. For entry to Show cause directing Defendants to appear in response to this Motion; and setting reasonable return date and other hearing or trial dates as

shall be deemed appropriate for the purpose of considering the issues raised by this Motion.
3.2.2. For recovery of the Henak v Whitcombe judgment Ex.17, in Henaks favor against Whitcombe's, for all sums paid to Henaks in satisfaction of King County Superior Courts earlier judgment, entered September 20, 1996, plus statutory interests, or for other appropriate Order of restitution to Whitcombes for monies paid to Henaks pursuant to said judgment.

3.3 Pursuant **to Federal Rule 60(b)(5) the judgment has been satisfied, released, or discharged, or prior judgment upon which it is based has been reversed or otherwise vacated**, for entry of order vacating the four Judgments rendered based upon the Henak v Whitcombe judgment; (1) CR60(b)(4) & (11) Motion - Filed 11/5/99, dismissed 1/3/00, as Res Adjudicate and frivolous, additional sanctions, Ex. 31, (2) CR60(b)(4)(5)(11)(c)(e)(1)(2) Motion - Filed 8/23/02, dismissed 2/20/2003 *nunc pro tunc* to January 3, 2003, as Res Adjudicate and frivolous, additional sanctions, Ex. 67, (3) State Court of Appeals Unpublished Opinion No. 52005-9-1 Consolidated w/ No. 52170-5-1, decided 5/10/04, placing additional sanctions. Ex. 75 (4) Whitcombe v Washington State, filed 2/13/01, dismissed Nov. 1, 2002 because "The courts lack subject matter jurisdiction and Plaintiff's have failed to state a claim" with prejudice and sanctions. Ex. 62.

> "To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort." Bordenkircher v Hayes, 434 U.S. 357, 363 (1978) (quoted in BMW at 517 U.S. at 573 n.19)

3.4 Pursuant to CR60 (b) (6) for any other reason justifying relief from the operation of the judgment; 3.4.1 Pursuant to State of Washington Rule 60 RELIEF FROM JUDGMENT OR ORDER, Ex. 151, and RCW 4.72 VACATION AND MODIFICATION OF JUDGMENTS, Ex. 101; for entry to provide order for a new civil trial in the Henak v Whitcombe case with a leave to amend to add new causes of action and parties with court appointed counsel as federal and state case law provides in situations as stated in Whitcombe's pleadings in State court Whitcombe v Washington State, but denied, Ex. 53 & 56, pp. 4-6. Relevant State Case law supporting new trial is cited in Whitcombe's 2nd CR60 Motion, Ex. 57, p.12.

3.4.2 Pursuant to 18 USC 4 Misprision of felony and 18 USC 2 Principals, (Aiding and Abetting/ Accessory in the commission of crimes), for entry of order to appoint special prosecutor to investigate Whitcombe's allegations of witnessing criminal actions identified in this instant Motion by certain State and local county officials in conjunction with Henaks and other private sectors acting under color of, but in violation of state laws committing;

FRAUDS - 18 USC 1001 Chapter 47 - Fraud and False Statements, 18 USC 1028 Fraud and related activity in connection with identification documents and information.

EXTORTION - pursuant to 18 USC 1951 Interference with commerce by threats or violence (2) and pursuant to Extortion - 18 USC 880 Receiving the proceeds of extortion.

CONSPIRACY - pursuant to 18 USC 241 Conspiracy against rights, by State and local county Officials and agencies acting in conjunction with Henaks and other named private sectors, "acting under color of, but in violation of State laws", defending the Henak v Whitcombe judgment, depriving Whitcombes of their Rights pursuant to 18 USC 242 Deprivation of rights under color of law.

IV MEMORANDUM

4.7.1 Federal case law supporting vacating void judgment is found cited in JURISDICTON, 1.1, 1.2, 1.3, 1.4.

4.7.2 Res ajudicata consequences will not be applied to a void judgment which is one which, from its inception, is a complete nullity and without legal affect. Allcock v. Allcock, 437 N,E, 2d 392 (ILL App 3 Dist. 1982). See also State Supreme Court - Docket # 76480-8, filed 03/09/2006, Ex. 86

4.7.3 Pursuant to State of Washington CR60 (b) (5) Vacating void judgment, "The court has a nondiscretionary duty to grant relief when a judgment is void, Re Mayfield, 47 Wash. App 699 (1987)."

4.7.4 Washington State CR60(b)(4) Fraud, expressly provides for the re-opening and vacations of judgments which are, in any material manner, based upon fraud, misrepresentation or other misconduct of an adverse party, Seals v. Seals 22 Wash. App. 652 590 P.2d 1301, (1979). In such instances, a concrete showing of all of the nine elements of common law fraud is unnecessary.

7.5 Pursuant to the policy enunciated in RCW 4.72.080, new trial should be proper in the administration of due ourse of justice in the Henak v Whitcombe case in a ifferent state away from Judges in Washington State.

V. CONCLUSION

Whitcombe's Rights were repeatedly violated by lenaks, Kitz, Misterek interaction in with State and ocal King County Officials and agencies acting under olor of, but in violation of State laws, in creating; false urvey practices, the false Henak v Whitcombe case and udgment, obtaining Whitcombe's land and money by raud and extortion, and conspiracy with intent to bstruct due course of justice in the Henak v Whitcombe ase from 1995 - 2006. Accordingly, Whitcombe's notion this Honorable court for the 111. RELIEF EQUESTED in this Motion.

DATED this 10th day of April 2006

/_____ s/_____

Kirk L Whitcombe - Pro se Susan L Whitcombe - Pro se

Kirk & Susan Whitcombe- Pro - Se's
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Whitcombe@qwest.net email address.

FILED
April 11, 2006
(per court
docket sheet)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Kirk & Susan Whitcombe)	CASE NO. CV'06 0374 PHX
Husband and Wife)	ROS
)	
)	KIRK WHITCOMBES'
)	DECLARATION IN
Plaintiff's)	SUPPORT OF FEDERAL
)	RULE 60 (b) (4)(5) & (6)
)	MOTIONS FOR RELIEF.
Larry & Susan Henak,)	
Husband and Wife)	
)	
Defendant's)	
_____)	

Declarant, Kirk Whitcombe, states as follows under penalty of perjury under laws of the United States, State of Arizona and State of Washington.

1. I, Kirk Whitcombe am one of the Plaintiff's in the above entitled action. I am of legal age, competent to testify concerning the following and declare the following based upon my personal knowledge. References are made herein to "we" or "us" or "our" is to Plaintiff's Kirk L and Susan L Whitcombe, husband and wife;

2. May 7, 1993, Washington State Department of Natural Recourses (DNR) issued us a Forest Practices Permit to conduct a tree farm business, designating North Bend Logging Inc., (NBL), our State Licensed Corporation, to build a permanent 1600", staked mapped, proposed maintenance road under contract with us on our six acres where we lived, and conducted NBL business in rural King County. Ex. 7. We also intended the road for our future home site. 1999 Declaration. Ex. 28.

3. September 20, 1996, King County Superior Court rendered a Henak v Whitcombe, 95-02783-1SEA, Judgment, claiming on its face of record to have located the common boundary line between Henaks and Whitcombe's, without consideration and disclosure of the affects the survey practices had on existing surveys in the area, recognizing, but ignoring, a 1979 King County approved Bennett Survey of Record No. 1278085, originally established those property boundary corners and common boundary lines. The judgment shows only where the surveyors staked their line crossed the road NBL was building. Ex. 17.

We were on our own land building the road, as the State permit provides. We did not trespass as determined by where the Short Plat originally established the common boundary line. Hancock Declar., Ex. 27, P.5, which fact of record is undisputed.

4. A 1997 King County Assessors Map, Ex. 18, shows where the 1979 Short Plat, "KCSP No. 1278085" located its common boundary line between Henaks and Whitcombe's. Henaks land parcel is the most westerly lot # 1, inside the Short Plat. Whitcombe's land parcel is adjacent and to the west, outside the Short Plat,

identified as "6.24 Ac." sharing the same common boundary line. **the Henak v Whitcombe judgment in contrast, on its face of record, lacks this needed disclosure ot operate.** and why it can not be recorded in public records. Ex. 17.

5. NBL, gainfully employing Kirk and Susan Whitcombe and others since 1988, not being able to finish its contractual services, was forced out of business.

6. We could not afford to pay for judgment imputed trespass. In fear of the judgment being enforced we satisfied the judgments contingencies and sold our land parcel to the same DNR agency that issues us a permit to build the road whereas the DNR officers acquired our land parcel and paid Henaks cash out of the proceeds in a Lis Pendens PAYOFF settlement action. Ex. 10.

7. When we sold our land to the state and relocated, we were forced to sell our land where the judgment staked the common boundary line on the ground by the three land surveyors because at the time we did not know the judgment could not operate, was legally ineffective, lacking subject matter and person jurisdiction, procured by fraud, and could not be recorded by the local county auditor pursuant to "RCW 65.04.070 Recording judgments affecting real property". Ex. 149. As revealed per current public land records; (1) April 12, 2005 certified copy of the Short Plat, Ex. 1, pursuant to "RCW 58.17.290 Certified copy as evidence." Ex. 141, (2) our 1997 Statutory Warranty Deed, conveying our land to the State, Ex. 19, (3) County Assessors 2000 tax rolls, based upon square footage, of our former land parcel, Ex. 47, Henaks land parcel, Ex. 48, the Short Plat, Henaks and Whitcombe land parcels remain unchanged by the

Henak v Whitcombe judgment, confirming State official acquired our land for the State as its boundaries were established prior to the judgment, which extra amount of land is determined by Hancock Declaration and survey to be 1/3 of an acre more than judgment allowed us to sell it, Ex. 27.

8. In doing so the state obtained the area of judgment imputed trespass included as our land parcel, not Henaks, because the judgment could not operate to affect current public land records. Henaks have filed no objections. In other words, the very land we thought we owned and, in law did rightfully own, we sold to the State and gave our money to Henaks to satisfy the State's false judgment against us through a Lis Pendens action, Ex. 10, "under color of State law". We allege this settlement action by federal legal definition is criminal Fraud and Extortion as stated in our 111 RELEIF REQUESTED, also violates Chapter 19.86 RCW Unfair Business Practices - Consumer Protection Laws, Ex. 114 and other laws.

9. The judgment has not operated, is legally ineffective since its inception, is false and void. This is confirmed pursuant to "RCW 58.17.290 Copy of plat as evidence." Ex. 141, as disclosed by April 12, 2005 certified copy of the 1979 Bennett Short Plat, as evidence, Ex. 1, showing no affects of the 1996 judgments, being recorded with the King County Auditor, June 1, 2004, eight years after it was rendered, claiming to have located the Short Plat's NW and SW property boundary corners and common boundary line. Ex. 17.

10. Henaks never paid taxes on the disputed land, before or after the judgment as required by state laws, Chapter

7.28, RCW, Ex's. 105-110. Henaks and their attorney knew the judgment was not operating, at the time they accepted our money to satisfy the judgment, in part because they "mysteriously" had not requested the local county auditor to perform its duties required by law to execute the judgment pursuant to "RCW 65.04.070" Ex. 149, until June 1, 2004, as shown on the face of the judgment. Ex. 17.

11. It is now much too late for Henaks to have their judgment operate for them even if it could operate after being recorded, which it has not as confirmed by April 12, 2005 certified copy of the Short Plat, Ex. 1. Pursuant to KC 19.08.112 boundary line adjustments (c) and KC 19.08.113 Boundary line corrections (c) allow only one year to be recorded that are approved by the county. Ex. 113.

12 **THE COURTS LACK SUBJECT AND PERSON MATTER JURISDICTION** to take first time applications for boundary line adjustments and corrections between land owners who had not first applied for by local counties where the land parcels are situated. Courts only have jurisdiction to review such executive branch decisions.

Pursuant to "RCW 58.17.030 Subdivisions to comply with chapter, local regulations" Ex. 136, (emphasis added), local regulation KING COUNTY GENERAL RULES OF ACCEPTABILITY, "KC 19.08.112 adjusting boundary line" and "KC 19.08.113 boundary line corrections", Ex. 113, does. State case law shows courts not procured and tricked by deceptive frauds will not intervene. Cited case law in our 2nd State CR60 Motion to Vacate Judgment, Ex. 57, p. 5.

13. THE JUDGMENT IS PROCURED BY MULTIPLE FRAUDS; Henaks, Henaks surveyor, Henaks attorney, and local King County and State Officials, agencies are involved in, the reason the judgment has not operated since its 1996 inception as per decree, but operating instead as an instrument of fraud and extortion for the sole benefit of Henaks and State of Washington at the wholesale cost of our Rights secured by the Constitution and laws.

13.1 Henaks land surveyors, Mr. Kitz fraudulently procured advice in 1989 from the Federal Bureau of Land Management (BLM), on how to accurately locate and establish property boundary corners and common boundary lines of existing Surveys of Record, Ex. 3, by inquiring how to accurately resurvey and retrace subdivisions of 640 acre Federal sections of land, Ex. 2, ignoring the written cautions in that advice Ex. 3, to consider existing surveys in the BLM advised survey practices. This fact is stated in the BLM's own words in their Jan. 16, 2001 letter to Mr. Kitz, Ex. 39 and reflects so in in Kitz's Record of Survey. Ex. 8.

13.2 Mr. Kitz also used his procured 1989 BLM advice incorrectly in his survey practices for Henaks by only doing a partial resurvey, which misrepresented the Short Plat and Henaks most westerly lot within to be smaller than their legal descriptions, when in fact if Mr. Kitz would have performed his survey practices following 1989 BLM advice correctly, he would have caused just the opposite, reducing and relocating the Short Plat and all of it's inner lots, including Henaks lot # 1, in truth, undermining the very purpose of the Henak v Whitcombe lawsuit and reason for it to even

exist. Hancock Declaration, Ex. 27, p.3, 1st CR60 Motion to Vacate Judgment, Ex. 28.

13.3 The judgment is procured by fraud practiced in the trial court by Henaks attorney, Mr. Misterek who created a false 1995 quitclaim deed that states, without disclosure, the Short Plat and Henaks inner lot one are smaller than the area included their legal descriptions., Ex. 9, and are therefore entitled to more "unspecified" land as per judgment unrecorded common boundary line location between Henaks and Whitcombes. At Mr. Mistereks request, the King County Auditor recorded this instrument in violation of "RCW 58.17.190 Approval of plat required before filing --Procedure when unapproved plat filed", Ex. 138, and Mr. Misterek then submitted this to the county auditor approved and recorded instrument as prima facie evidence to the trial court, which was instrumental in procuring the judgment against us.

13.4 The Judgment, is falsely procured by relying on four Record of Surveys, Ex's 6- Chicklero, 8 - Kitz, 11 - Chicklero Amended, and 15 - Hancock, that on their faces of record are falsely certified by the three land surveyors and the local county auditor as Record of Surveys on their faces pursuant to "RCW 58.09.080 Certificates -- Required -- Forms", Ex. 130.

In particular, none of the surveyors survey practices as reflected in the Record of Surveys on their faces conform with "RCW 58.09.040 Records of survey == Contents -- Filing -- Replacing corner, filing record", Ex. 127. This part of the Survey Recording Act, Public Disclosure Law, requires surveyors in their survey map intended for public use mandatory disclose the affects their

survey practices have on existing surveys to show what they are doing is not violating existing laws regarding surveys, subdivisions, platting, boundaries, the Survey Recording Act supplements, "RCW 58.09.010 Purpose – Short Title", Ex. 124. This concept and purpose supports the same Citizens Bona Fide Property Rights concerns as Federal 43 USC 772 Ex. 156, and BLM with supporting state case law,

> "A government resurvey can not disturb title which parties have acquired up to the time it is made." Bently v Jenne, Wyo. 1925, 236 P. 509, 33 Wyo 1. "140413 43 USCA 772.

The State Attorney General "in writing" fully supports the Survey Recording Act, Public Disclosure Law, AGO 1971, No. 26, Ex. 153, and pursuant to RCW 43.10.030(5), Ex. 123, and Ex. 152, has created AGLO 1980, No. 31 and AGO 1989, No. 1, Ex's 154 & 155, for legal direction specifically for government officials and agencies having a statutory duty to execute RCW 58.09.040, Ex. 127

Because the judgment and survey practices on their faces of record do not comply with RCW 58.09.040 as required by state law, they also do not comply with other state laws of the Survey Recording Act; Ex's 124-132, RCW 58.09.010, 030, 050, 060, 080, 110, 140, nor do the judgment and survey practices comply with other existing laws regarding surveys, subdivisions, platting, boundaries, the Recording Act, supplements pursuant to RCW 58.09.101 Purpose - Short Title; Ex. 124, Chapter 58.17 RCW - Ex's 133-142, Chapter 58.24 - Ex's 143-145, Chapter 65.04 RCW - Ex's 146-149, Chapter 332.130 WAC - Ex's 115-120.

All of these state laws the judgment and survey practices relied upon are in direct violation of. Without the Survey Recording Act, Public Disclosure Law being executed exposing the affects of land surveyors survey practices on existing surveys, allegedly violating Citizens Bona Fide Property Rights, there is no way to confirm this. And this is not just the judgment, rather most likely state wide regulated survey practices the judgment is enforcing.

13.5 The State Board of Registration for Professional Engineers and Land Surveyors has negligently and falsely approved of Mr. Kitz's survey practices in two adjudicative proceedings pursuant to "RCW 58.09.140 Noncompliance grounds for revocation of land surveyor's license", Ex. 132. One proceeding was before the judgment, 1995-1996, Ex's 12, 13, 14 & 16 and one was after the judgment in 1999-2000, Ex's 30, 32, 33, 34, with both conclusions approving and commending Mr. Kitz for obtaining BLM advice, accurately following it and promoting other land surveyors to follow, Ex. 4 & 5.

14. Pursuant to "RCW 5.44.070 Certified copies of instruments" Ex. 104, all courts involved in this case accepted the four Record of Surveys as "prima facie" evidence under "State Due Process of Law". Our fate and State falsely approved survey practices has been sealed "under color of, but in violation of State Laws".

15. CONSPIRACY After the judgment was satisfied by Henaks and State officials to their best interests, Henaks, Kitz, Transnation Title Insurance Co., Misterek, State and local county officers, agencies representing the State of Washington's and Henaks best interests; impeded, hindered, obstructed, and defeated due course of justice

in the Henak v Whitcombe case 1998-2006 in alleged acts of Conspiracy.

15.1 This conspiracy action started after Mr. Misterek under Henaks direction, successfully practiced fraud in the trial court, obtaining a judgment in his clients, Henaks favor, practices fraud again in the court of Appeals for Henaks in support of the fraud he practiced in the trial court as explained in our State CR60 Motion REPLY TO RESPONSE, Ex. 29, falsely procuring the Court of Appeals April 27, 1998 Unpublished Opinion, No. 39547-5-1, as disclosed in Ex. 22, pp. 6 & 7.

15.2 October 1999, we discovered Mr. Kitz used 1989 BLM advice incorrectly in his survey practices misrepresenting the actual legal size of the Short Plat and Henaks most westerly inner lot within, that if implemented correctly would have reduced the Short Plat and its inner lots in size and relocated them, denying the purpose for the Henak v Whitcombe case. Ex. 27, 5. D, p.3. When we produced this evidence to King County Superior Court in our 1st CR60 Motion to Vacate the judgment, Ex. 28, the judges assigned to the case, not the original pro-tem judge who heard and tires the case in 1996, which we asked for, dismissed the action; Res Adjudicate, "frivolous", placing additional sanctions on us, 1/3/2000, Ex. 31.

In defense to support the judgment is legal, Mr. Misterek conceals he and Henaks knew the Judgment was not operating, yet was satisfied by Henaks and State officials. Mr. Kitz was also notified by the BLM in August of 1999 his survey practices were fraudulently procured from the BLM, violating Citizens Bona Fide Property Rights. BLM's later January 16, 2001 letter.

15.3 We produced the same facts and supporting information in our 2nd complaint of Mr. Kitz's same survey practices to the State Board of Registration for Professional Engineers and Land Surveyors on November 11, 1999, Ex. 30. In response to their information and Mr. Kitz's response, Ex. 32, the Board adjudicated and dismissed the complaint, Ex. 33 & 34 commending Kitz for having procured BLM advice and accurately following, as the Board did in its 1995 investigation, again violating it's statutory duties pursuant to RCW 58.09.140, obstructing our due course of justice and promoting false survey practices that is allegedly violating Citizens Rights in the process.

15.4 January 0f 2001 we discovered Mr. Kitz falsely certified his survey practices conform with the requirements of the Survey Recording Act on the face of his survey map pursuant to RCW 58.09.080, Ex. 130. We filed our third complaint with the Board about Mr. Kitz's same survey practices, January 5, 2000, informing the Board and other Agencies and officers, including the BLM as indicated on the bottom of page 3, Ex. 36, the Board acknowledged receiving the complaint, Ex. 37. The BLM immediately responded with its January 16, 2001 letter, Ex. 39. The Board refused to conduct and investigation, dismissing our request. Ex. 40.

15.5 Feb. 13, 2001 we filed our Okanogan Superior Court "PETITION FOR REVIEW OF STATE AGENCY" Ex. 42, and later, January 16, 2002 after additional discovery, our AMENDED PETITION, Ex. 52 because King County Risk Management and Prosecutor would not perform their statutory duties requiring the County Auditor

perform its statutory duties in executing the Survey Recording Act, all past and present actions brought pursuant to,

> "RCW 34.05.570 Judicial Review (4) Review of other agency action (b) A person whose rights are violated by and agency's failure to perform a duty that is required by law to be performed may file a petition for review pursuant to RCW 34.05.514 seeking and order pursuant to this subsection requiring performance." Ex. 121.

PLUS we made allegations the State Attorney General is representing and defending it's inferior high ranking officers and agencies delinquent interests instead of the AG performing its statutory duties pursuant to RCW 43.10.030. (2) Ex. 123, requiring the delinquents perform their statutory duties required by law to be performed.

The case was dismissed after many of our motions were denied on the AG proposal with prejudice and sanctions by Okanogan Superior Court Nov. 1, 2002, on grounds, "The courts lack subject matter jurisdiction and Plaintiff's have failed to state a claim." , Ex. 62, without explanation. The Legislature can't make a law requiring the Judicial Branch render an Order requiring the statutory duties of the Executive Branch be performed ? Plaintiff's claim their Bona Fide Property are being violated is not a right secured by the Constitution and laws ? We filed our appeal 11/28/2002. Ex. 63. Designated Clerks Papers missing.

Judge never reviewed file before rendering decision. Appeal delayed because of government false document, all explained. Ex. 73. The Court of Appeales, Div. 111,

January 25, 2005, Case No. 21637-3 Unpublished Opinion, Ex. 80, confirmed the trial court, denying our Motion for Reconsideration, Ex. 81, April 1, 2005. Ex. 84.

15.6 May 2, 2002, one year after we discovered Mr. Kitz falsely certified his survey map as a Record of Survey, fraudulently procured BLM advice, allegedly procuring the Henak v Whitcombe judgment with fraud, we filed the Whitcombe v Kitz case, Cause No. 02-2-074111-1SEA, Ex. 54. The case was dismissed with prejudice and sanctions for being beyond the three year statute of limitations "Defendants claims if any survive this ruling". Ex. 64.

15.7 August 23, 2002 we filed our second CR60 Motion For relief from the Henak v Whitcombe judgment, alleging the judgment has not operated since its inception, lacks subject matter jurisdiction, and is procured by fraud based upon our discoveries in 2001, Ex. 57, Under protest, the Chief Civil Judge heard and tried our motion after we had already arranged for the original Pro-Tem judge to hear and try the Motion. Ex. 69. The case was heard and tried anyway by the Chief Civil Judge who dismissed the case February 20, Nunc Pro Tunc to January 3, 2003 as being Res Adjudicate, frivolous, placing additional sanctions on us. Ex. 67. The Court of Appeals Div. 1 consolidated our 2nd Motion to Vacate Judgment with the Whitcombe v Kitz case whereas the Court of Appeals confirmed both lower court decisions May 19, 2004, Unpublished Opinion placing additional sanctions on us. Ex. 75.

We filed a Petition for Discretionary Review, Ex. 76. The State Supreme Court rendered and Order March 1, 2005 "Petition for Review is Denied", Ex. 82, knowingly,

as of record, leaving the Henak v Whitcombe judgment void and without finality, operating as a fraud and extortion in law.

15.8 There are many more government agencies and officers we corresponded with having a statutory duty to protect our rights secured by the Constitution, but they all refused. They are identified with their written correspondences in Ex. 85.

DATED this 10th day of April 2006

s/_____ s_____
Kirk L Whitcombe Susan L Whitcombe

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(3)

NO. 07-875

FILED
MAR 17 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

SUPREME COURT OF THE UNITED STATES

November term, 2007

KIRK AND SUSAN WHITCOMBE
Husband and wife
Petitioners'

v.

LARRY AND SUSAN HENAK
Husband and wife
Respondent's

On a Writ of Certiorari to the United States Court of Appeals for the for the United States Court of Appeals for the Ninth Circuit

PETITION FOR REHEARING

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TABLE OF AUTHORITIES

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McClellan v. Carland, 217 U.S. 268, 281 (1910)..... ...8

Perry v. United States, 204 U.S. 330, 358 8

PETITION FOR REHEARING

Pursuant to Rule 44.2 petitioners petition this court for rehearing. (Writ of Certiorari was summarily denied February 19, 2008.

U.S FIRST AND FIFTH AMENDMENT RIGHTS REQUIRES COURT OF APPEALS EXPLANATION OF THE REASONS WHY IT AFFIRMS A FEDERAL DISTRICT COURTS DISMISSAL.

The US Court of Appeals for the Ninth Circuit July 16, 2007 Memorandum, Ex. A-11[1] does not afford Whitcombe's their U.S. First Amendment Rights to petition to government for redress of grievances, without fear of retaliation for the same, nor their U.S. Constitutional Fifth Amendment Due Process and Equal Protection of the Law guarantees.

The Ninth Circuit Court's Memorandum arbitrarily affirms the federal district courts decision to dismiss Whitcombe's federal case without explanation why in regard to pertinent disregarded facts. Federal pro-se. Plaintiff/ Whitcombe's case is a Federal Rules of Civil Procedure, CR60 (b) Motions Civil Rights Case.

Whitcombe's Case was first struck by the district court on district court allegation of a mere local court rule technicality, District Court's February 21, 2006 Order, Ex. A-1. which action is against U.S Supreme Court Case law as cited in Whitcombe's Writ of Certiorari, p. 14.

Then when Whitcombe's filed their Amended case after

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[1] Exhibits "A" are found in Whitcombe's Writ of Certiorari Appendix.

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they received a response from the court on what the court rule technicality was, ((District Court's March 20, Order, Ex. A-2, (pertinent part is quoted in Writ of Certiorari, P. 10)), which court alleged technicality was not disclosed in the local court rule and Whitcombe's, as soon as they could, filed their Corrected Amended Case. District Court's April 12, 2006 Order, Ex. A-13. "After" Whitcombe's filed their corrected amended case the district court dismissed Whitcombe's case again. This time for not being timely filed (district court's April 12, 2006 Order, Ex. A-3) when the district court's own docket sheet, dated stamp on Whitcombe's corrected case and UPS hand delivery receipt shows the court had already received and filed it. Most importantly, Whitcombe's could find no local court rules or Federal Rules of Civil Procedure Rules, restricting the time for litigants to refile their corrected and amended case.

Then the district court decided to dismiss Whitcombe's case because the district courts said district courts do not have jurisdiction to adjudicate Whitcombe's CR60 (b) Motions Case. Ex. A-3.

When Whitcombe's filed a CR60 Motion to vacate the courts previous judgment for obviously not being legally effective, in vacating the state void judgment. the court threatened Whitcombe's with sanctions if they continue to persist in trying to get the district court to comply with CR60. District Court's Dec. 4, 2006 Order, Ex. A-8.

The Ninth Circuit Court may have mislead this Court into thinking, as the Ninth Circuit Court's Memorandum implies, that Whitcombe's as sour grapes losers were ignorantly trying to get the district court to

provide a typical Court of Appeals appellate forum to review and reject three state court cases. Whitcombe's agree the Rooker - Feldman doctrine applies in denying district court jurisdiction in this category of a federal case.

Whitcombe's Writ of Certiorari, responds to the Ninth Circuits Memorandum by citing the First and Fifth Amendment and presenting two federal questions.

Federal Question (1),

"Can federal district courts and judges dismiss federal Po-Se Plaintiff's CR60 Motion Complaint involving civil rights issues of a state void judgment allegedly violating citizens rights on a technicality then dismiss Pro-Se's corrected CR 60 Motion after the court had already received it for not being timely filed when the Court gave no time restrictions, and there are no local court rules of Federal Court Rules of Civil procedure requiring time limitations?"

Federal Question (2)

"Does the Rooker- Feldman Doctrine as interpreted by the Courts of Appeals, recognizing federal district courts do not have jurisdiction to vacate void judgments allegedly violating citizens rights the state highest court refused to address, remedy, and finalize, because only the United States Supreme Court has jurisdiction to review state court judgments of the highest state court, or does Federal Court Rules of Civil Procedure provide the basis of jurisdiction in district courts through an independent and original action, CR60 Relief From Judgment or Order, (b) (4),(5) and (6)?"

Whitcombe's case is a Federal Rules of Civil Procedure, CR60 Relief From Judgment or Order (b) (4), (5), and (6) federal independent and original action Motions Case. Ex. A-13.

As Whitcombe's CR60 (b) Motion Case Ex. A-13, states, Whitcombe's are seeking federal relief from five state of Washington judgments, void on their faces in four State of Washington court cases attached to Whitcombe's federal case in district court; the 1996 Henak v Whitcombe Judgment, pursuant to CR60 (b) (4), two state adopted CR60 (b) Relief from Judgment or Order (b) Motion case Judgments, 1999, 2003, one Whitcombe v State Judgment, 2002, and one Whitcombe v Kitz judgments 2003, based on the Henak v Whitcombe Judgment, pursuant to CR60 (b) (5).

This totals five separate, but related judges judgments void on their faces for a multiple of alleged reasons, as stated in Whitcombe's federal case at bar. None of the many state courts or federal district court and Court of Appeals for the Ninth Circuit Court, confronted with this evidence have contested Whitcombe's allegations. They all just chose not address Whitcombe's claims.

Whitcombe's are also seeking relief from the operation of the void judgments not covered by CR60 (b) (4) and (5), pursuant to CR60 (b) (6). Each of the judgments are allegedly violating Citizens Rights secured by the State of Washington and US Constitution and laws. The State of Washington has refused to address the problem in denying Whitcombe's State Petition for Discretionary Review. March 1, 2005. All of these records are found in Whitcombe's federal case on file in the federal district court of Arizona.

Whitcombe's federal case, as it reads, and by its nature, is categorically NOT a case seeking federal relief by trying to get the district court to provide a appellate review forum to review the judgments void on their faces to see if they are indeed void on their faces. Instead, and again, as previously noted, Whitcombe's Case is a Federal Court Rules of Civil Procedure, CR60 Relief From Judgment or Order (b) (4), (5) and (6) Motions Case.

Federal Rules of Civil Procedure, "...govern the procedure in all civil actions and proceedings in the United States district courts,...", Federal Court Rules of Civil Procedure, Rule 1 - Scope and Purpose.

CR60 Relief From Judgment or Order, (b) (4) the judgment is void" does not require district courts to act like a Court of Appeals and follow typical appellate procedure rules of civil procedure. A void judgment is a legal nullity having no legal effect what so ever. CR60 (b) (4) requires the district court to treat void judgments for what they are, a legal nullity, not for what they are not. This is why void judgments are not worthy of an appeal in a Court of Appeals forum, which district courts, not being a Court of Appeals Court, do not have jurisdiction to entertain.

It is obvious that if the Scope and Purpose of Federal Rules of Civil Procedure is to "...govern the procedure in all civil actions and proceedings in the United States district courts,..." that the Supreme Court and congress would provide jurisdiction for the federal district courts to implement and follow Federal Rules of Civil Procedure, other wise Federal Court Rules of Civil

Procedure could not be used.

Accordingly Whitcombe's brought their " Court Rule of Civil Procedure, CR60 Relief from Judgment or Order" Motions Case, pursuant to district court jurisdiction, 28 USC 1332, 28 USC 1331,and 28 USC 1343. This granted federal district courts jurisdiction, requiring the district court to conduct a CR60 (b) (4), (5) and (6) forum to adjudicate justice.

In light of all this information and despite this information presented to the Ninth Circuit, The United States Court of Appeals for the Ninth Circuit in its July 16, 2007 Memorandum states,

> "United States district courts lack authority to review final judgments of the state courts acting judicially.; such review may only be had in the United States Supreme Court. See ***Dist. Of Columbia Court of Appeals v. Feldman*** 460 U.S. 462, 482 (1983). The Rooker - Feldman thus bars cases such as the Whitcombe's….. " Court of Appeals for the Ninth Circuit July 16, 2007 Memorandum, Ex. A-11-2.

The Ninth Circuit Court's Memorandum still does not explain why the district court doe not have jurisdiction in the Whitcombe Case at bar. First of all, state courts rendering final judgments that are void on their faces, whether intentional or not, are NOT acting judicially.

Secondly, if district courts lack subject matter jurisdiction to implement and follow Federal Court Rules of Civil Procedure, then all Orders and Judgments rendered in the United States district courts following federal district court Federal Rules and Civil Procedure

would have to be vacated for lack of jurisdiction.

It is just not rationally possible that the U.S Supreme court or Congress forgot to provide jurisdictional statutes for district courts to follow in implementing and following CR60 or for any other Federal Rules of Civil Procedure for that matter. The real issue here then is presented in Whitcombe's two federal questions in their Writ of Certiorari questioning if the district court has jurisdiction for doing what it did in dismissing federal pro-se, Plaintiff/Whitcombe's federal Rules of Civil Procedure, CR 60 Relief From Judgment or Order (b) case.

Whitcombe's Writ of Certiorari federal question (2) federally questions which federal court has jurisdiction to provide a forum for a Citizen seeking federal releif from a void judgment ? This is a very important federal question raised by the Ninth Circuit Court of Appeals affirming the district courts dismissing of Whitcombe's CR60 (b) Motion Case for alleged lack of jurisdiction when Federal Rules of Civil Procedure are for federal district courts.

Additionally the United States Court of Appeals for the Ninth Circuit in its own independent rulings related to the Whitcombe case have denied Whitcombe's complaint the federal district court judges are not performing their duty required of them by CR60 (b) (4) (5) and (6), with the Court of Appeals for the Ninth Circuit affirming the Chief Judge's dismissal of Whitcombe's Judicial Complaint by "IN RE COMPLAINT OF JUDICIAL CONDUCT" No. 06-89062 Order January 18, 2007, Ex. A- 9 and Whitcombe's complaint that the federal district court is not

performing its duty required of CR60 (b) (4), (5) and (6) which Writ of Mandamus was denied by October 19, 2006 Order, Ex. A-7.

It is now a truism that the federal courts are under a "virtually unflagging obligation" ... to exercise the jurisdiction given them." England v. Louisana State Bd. of Medical Examiners, 375 U.S. 411, 415 (1964); accord Deakins v. Monoghan, 484 U.S. 193, 203 (1998); Colorado River Water Conser. Dist. v. United States, 424 U.S. 800, 817, rehearing denied, 426 U.S. 912 (1976); McClellan v. Carland, 217 U.S. 268, 281 (1910). Further more, the Ninth Circuits own case law supports this truism one step further to say if courts do not honor this truism, they will violate Citizens constitutional due process rights.

"Denial of any forum in which to bring [a] claim would almost surely violate [litigants'] ... constitutional due process rights." (Board of Trustees of Local 25 v. Madison Hotel, Inc., 97 F. 3d 1479, 1489 & n. 17 (D.C. Cir. 1996) (Rule 60(b) motion at issue) (citing Erwin Chemerinski, *Federal Jurisdiction*, 172, 196-200 (2d ed. 1994), *inter alia*, for the proposition "that due process would be violated if federal jurisdiction were restricted in such a manner as to prevent any court...from hearing a claim.")

Perry v. United States, 204 U.S. 330, 358

> "I do not understand the government to contend that it is any less bound by the obligation than a private individual would be..." "It is not the function of our government to keep the citizen from falling into error; it is the function of the

citizen to keep the government from falling into error."

It is the paramount duty of the Supreme Court of the United States to establish law and order in the federal courts by interpreting the Constitution and determining the constitutionality of congressional and state legislated laws so as in the Whitcombe's case, state and federal courts can administer Constitutional Justice by "Rule of Law. Rule of Law in its most basic form is intended to be a safegard against arbitrary governance.

The Constitution, is the Supreme Law of the Land, a King that can do no wrong. No one, and/or branch(s) government, are above the Constitution and laws in the United States of America. If the rule of law in the United States of America is a law of rules, then those rules constrain this Court as they do every other branch of government that makes up a government bound by the United States Constitution.

"To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort": Bordenkircher v. Hayes, 434 U.S. 357, 363 (1978) (quoted in BMW at 517 U.S. at 573 n.19) see Whitcombe's CR60 (b) Motion Case, Ex. A-13-5.

To punish a person because he has petitioned to the government for redress of grievances in state and federal courts is a direct violation of Citizens US Constitutional First Amendment Rights which grants US Citizens the inviolate right to petition the government for redress of grievances and have government address the matter in a meaningful manner without fear of retaliation for the same. And when state and federal

government violates Citizens U.S Citizens inviolate First Amendment Rights government most likely violates Citizens 14th and 5th Amendment Due Process and Equal Protection of the Law Rights.

If federal district courts are not required to perform their duty by rule of law required of them pursuant to CR60 (b) (4) (5) and (6), then judges void judgments, violating Citizens Rights will continue unabated, whether intentionally or not, that as in the Whitcombe case, solely benefit government self interests at the wholesale cost of Citizen's Constitution and Citizen's Rights secured by the Constitution and laws.

Pro-Se Petitioner Whitcombe's ask that this Honorable Supreme Court to please review the sufficiency of our Pro-Se plaintiff's complaint by liberal construction of our pleadings Haines v. Kerner, 404 U.S. 519, 521 (1972) so that justice can be adequately served.

CONCLUSION

For the foregoing reason, this petition for rehearing should be granted, the opinion on February 19, 2008 vacated.

Dated this 17 day in March, 2008

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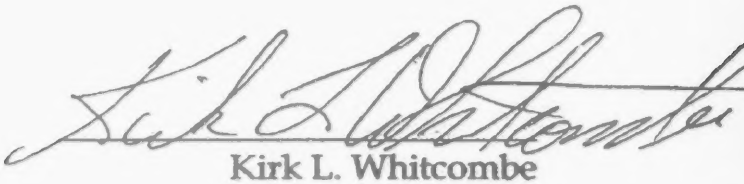
CERTIFICATE

This petition for rehearing is restricted to the grounds specified in Rule 33, paragraph 2 and is presented in good faith and not for purposes of delay.



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